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Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

(1) For NASA rules and regulations implementing the Privacy Act, see Privacy—NASA Regulations, (14 CFR 1212). The Act applies to any contractor maintaining a system of records to accomplish a NASA mission.

(2) Systems of records to which the Privacy Act does not apply include—

(i) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the purpose of providing supplies and services to the Federal Government; and

(ii) Records that—

(A) Are maintained under contracts with educational institutions to provide training;

(B) Are generated on students working under the contract relative to their attendance (admission forms, grade reports, etc.);

(C) Are similar to those maintained on other students; and

(D) Are commingled with their records on other students.

Subpart 1824.2—Freedom of Information Act

1824.203 Policy. (NASA supplements paragraphs (a) and (b))

(a) For NASA implementation of the Freedom of Information Act, see Availability of Agency Records to Members of the Public (14 CFR part 1206).

(b) When receiving any Freedom of Information Act request from the public, the contracting officer shall immediately refer the request to the Freedom of Information Act Officer, NASA Information Center, or other responsible point of contact as set forth in installation procedures.

[61 FR 55758, Oct. 29, 1996. Redesignated at 62 FR 36713, July 9, 1997]

PART 1825—FOREIGN ACQUISITION

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36713, July 9, 1997, unless otherwise noted.

1825.000 Scope of part.

1825.000-70 Definition.

Agency head, for the purposes of this part, is the Associate Administrator for Procurement unless specifically stated otherwise.

Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.

1825.101-70 NASA definition.

Canadian end product, or an item with an estimated value of \$25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of \$25,000, the definition at FAR 25.401 applies.

1825.102 Policy. (NASA supplements paragraphs (a) and (b))

(a)(3)(A) The procurement officer shall send proposed public interest determinations to the Associate Administrator for Procurement (Code HS) for approval.

(B) See 1825.103-70(A) for a blanket determination regarding Canadian end products.

(a)(4) The items listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or a satisfactory quality.

(b)(1) Contracting officers may make determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. The following is the format for nonavailability determinations:

DETERMINATION OF NONAVAILABILITY

Pursuant to the authority contained in the Buy American Act (41 U.S.C. 10) and authority delegated to me by NFS 1825.102(b)(1), I hereby make the following findings:

a. (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

b. (Enter the name and address of the proposed contractor or supplier and the country of origin of the items.)

c. (Include a brief statement of the necessity for the acquisition.)

d. (Include a statement of facts establishing the nonavailability of similar items of domestic origin. If there is no known domestic item that can be used as a reasonable substitute, make a statement to this effect.)

On the basis of these findings, I determine that the item(s) described in paragraph a. above is/are not mined, produced, or manufactured (or the articles, materials, or supplies from which the item(s) is/are manufactured) are not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

Accordingly, the Buy American Act requirement that acquisition be made from domestic sources and that the item(s) be of domestic origin is not applicable to this acquisition, since the acquisition is within the Buy American Act's nonavailability exception.

Authority is granted to acquire the above-described item(s) of foreign origin (country or origin) at an estimated total cost of \$_____, including duty and transportation costs to destination.

(Date)

Contracting Officer

1825.103 Agreements with certain foreign governments.

1825.103-70 Canadian end products.

(a) The Associate Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of \$25,000 or less as defined in 1825.101-70. Accordingly, contracting officers shall evaluate all offers for such Canadian end products on a parity with offers for domestic and products, except that applicable duty (whether or not a duty free entry certificate may be issued) shall be included in evaluating offers for Canadian end products.

(b) See FAR 25.402(a)(3)(ii) for evaluation of Canadian end products with values in excess of 25,000 as defined in FAR 25.401.

1825.105 Evaluating offers. (NASA supplements paragraphs (a) and (c))

(a) To make the price comparison between domestic and foreign offers, the contracting officer shall increase the price of the foreign offer by 6- or 12-percent, as applicable. If the application

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of the differential results in a tie between the foreign and domestic offers, award shall be made to the domestic offeror.

(c) The FAR requirement to apply both 6- and 12-percent factors pertains only when the lowest acceptable domestic offer is from a small business concern.

1825.108 Excepted articles, materials, and supplies. (NASA supplements paragraph (a))

(a) See 1825.102(a)(4) and 1825.202(a)(3).

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy. (NASA supplements paragraph (a))

(a)(2) The construction materials listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. In addition, subject to the approval of the head of the contracting activity when required, contracting officers may make determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. See 1825.102(b)(1) for the determination of nonavailability format.

1825.207 Solicitation provisions and contract clauses.

1825.207-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.225-71, Nondomestic Construction Materials, in all contracts for construction.

Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies. (NASA supplements paragraph (c))

(c) The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

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Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart. (NASA supplements paragraph (b))

(b) The Buy American Act and the Balance of Payments Program apply to all acquisitions of Japanese end products or services in excess of \$2,500.

1825.402 Policy. (NASA supplements paragraph (c))

(c)(3) Waiver under the Trade Agreements Act is not applicable to acquisitions of Japanese end products or services in excess of \$2,500.

1825.403 Exceptions. (NASA supplements paragraph (c))

(c)(2) If a contracting officer considers an individual acquisition to be a purchase “indispensable for national security or for national defense purposes” and appropriate for exclusion from the provisions of FAR 25.4 and of this Subpart 1825.4, the contracting officer shall submit a request with supporting rationale to the Headquarters Office of External Relations (Code I) for coordination with the Office of the U.S. Trade Representative.

1825.405 Procedures.

Solicitations shall require that applicable duty charges be included in the offered price of an eligible product, whether or not duty-free certificates are obtained. Duty charges shall be included in the price evaluation.

Subpart 1825.6—Customs and Duties

1825.602 Policy.

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR 1217.

1825.603 Procedures.**1825.603-70 NASA procedures.**

(a) The following officials are authorized to certify that articles are eligible for duty free entry:

(1) Procurement officers, through delegation from the Associate Administrator for Procurement, for articles imported into the United States that are acquired by NASA or other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is, or will be, vested in the U.S. Government in accordance with the terms of the contract or subcontract. All duty-free certificates (see paragraph (b) of this section for format) shall be coordinated with the center Chief Counsel. Procurement officers shall maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

(2) The Associate Administrator for External Relations (Code I) for articles imported pursuant to international agreements.

(3) The Associate Administrator for Space Flight (Code M) for articles imported under agreements other than those identified in paragraph (a) (1) and (2) of this section, including launch service agreements.

(b) Procurement officers shall complete Customs Service Form CF 7501 (Entry Summary) and an appropriate certification when approving duty free exemption for articles acquired by NASA.

(1) For a single import, use the following certification format specified in 14 CFR 1217.104(a):

Articles for the National Aeronautics
and Space Administration

Item 9808.00.80, Harmonized Tariff
Schedule of the United States

Program: (Insert name of NASA Program) _____

I hereby certify that the articles identified in *[attached invoice]* are being imported for the use of the National Aeronautics and Space Administration (NASA) in accordance with 9808.00.80, Harmonized Tariff Schedule of the United States.

Name _____
Date _____

(2) For a series of imports under a specific acquisition, use the certification format in paragraph (b)(1) of this section and add the following paragraph specified in 14 CFR 1217.104(c) before the signature block:

Before this certification is used to obtain duty-free entry of these articles, a cognizant NASA official at the receiving NASA Installation, who is designated by the Installation Director, shall verify in writing that specifically identified articles to be entered on a particular date are the articles described in this certification or its attachments. This verification and this certification shall be presented to the U.S. Customs Service at the time of entry for the particular articles is sought.

1825.605 Contract clause.**1825.605-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.225-73, Duty-Free Entry Supplies, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR 25.604 and 1825.603.

Subpart 1825.9—Additional Foreign Acquisition Clauses

**1825.901 Omission of Audit clause.
(NASA supplements paragraph (c))**

(c) The Administrator is the approval authority for waivers. The contracting officer shall submit the waiver request, consisting of the determination and findings prescribed in FAR 25.901(d) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for negotiating foreign contracts.

1825.7001 Definition.

Foreign contract acquisition, as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

- (a) Negotiation of government-to-government agreements;
- (b) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico;
- (c) Contracts with the Canadian Commercial Corporation; or
- (d) Acquisition of books and periodicals from foreign sources of supply.

1825.7002 Policy.

(a) Each contracting office (including NMO JPL) shall coordinate with the Headquarters Office of External Relations (Code I), before initiating any foreign contract acquisition if the acquisition is valued above \$100,000 or involves—

- (1) Importing or exporting goods or technical data from or to a country listed in 22 FR 126.1 (a) or (d) (Subchapter M, the International Traffic in Arms Regulations);
- (2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR Part 121 which require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR Part 744 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR Part 744, Supplements 1 through 3; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V.

(b) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through Headquarters Code I.

1825.7003 Procedure.

The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in 1825.7002 shall submit the following information to Headquarters Code I—

- (a) The name of the foreign entity, the country or countries involved, and the purpose of the contract;
- (b) The Space Act agreement(s) involved (pursuant to NMI 1050.9), if any;
- (c) A description of the goods or technical data requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and
- (d) The reason why the acquisition is being placed with a foreign entity.